

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

IN RE:	§	
	§	
TRUE BEGINNINGS, LLC,	§	CASE NO. 12-42061
	§	
DEBTOR.	§	CHAPTER 11

**TEXAS ATTORNEY GENERAL’S OBJECTION [TO PROTECT CONSUMER PRIVACY]  
TO THE TRUSTEE’S MOTION TO APPROVE SALE UNDER 11 U.S.C. § 363(b)(1)**

Comes now the State of Texas, by and through the Office of the Texas Attorney General (the “Attorney General”), and respectfully files this Objection to the Trustee’s Motion (the “Sale Motion”)(Docket Nos. 211, 225) seeking an Order approving the sale of Debtor’s Assets (the “Sale”) to purchaser PlentyofFish.com (“POF”) pursuant to the terms of the Asset Purchase Agreement (“APA”)(Docket #211-6). Simply stated, the Sale fails to adhere to the guidelines contemplated by Section 363 of the Bankruptcy Code and fails to adequately notify Debtor’s roughly 43 million registered members (“Customers”)<sup>1</sup> who have their highly sensitive personally identifiable information (“PII”) contained in Debtor’s databases that would ultimately be transferred to POF without the Customers’ knowledge or consent.

**Summary of Position**

The Attorney General does not object to a sale that is consistent with Debtor’s stated privacy policies as required by 11 U.S.C. § 363(b)(1). Given the highly sensitive nature of Customers’ PII, though, the Attorney General does object to inconsistencies in the Debtor’s ambiguous online published privacy policy and the subsequent failure to provide prior notice to Customers regarding the potential transfer of their PII. As set forth more fully herein, Debtor’s privacy policy contains ambiguities as to whether Customers will have a right to opt-out or opt-in to consent to the transfer of their PII. The Attorney General believes this ambiguity should be construed against the Debtor and thus an opt-in procedure is required.

The Attorney General also strenuously objects to the transfer of Customers’ financial information.<sup>2</sup> On information and belief, both the Trustee and POF have agreed that Customers’ financial information will not be transferred. The Attorney General reserves the right to further

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<sup>1</sup> Of Debtor’s 43,438,007 total Customers, 2,612,583 are from Texas.

<sup>2</sup> The total number of Customers includes 4,933,369 people who have provided credit card information as paid subscribers, 368,742 of which are from Texas. From August 1, 2012 (Petition Date) until October 1, 2013, 30,333 people have provided credit card information.

object on this issue if this is not the case.

If the Court were inclined to approve the Sale with an opt-out procedure, at a minimum, the Attorney General requests that the Debtor provide Customers notice of the Sale with ample time to alter or delete any PII they do not want transferred. Accordingly, the Attorney General provides proposed language herein along with a proposed time-line for such notice. In support of its Objection, the Attorney General alleges as follows:

### **Relevant Background**

1. On August 1, 2012, the Debtor filed a petition for reorganization pursuant to chapter 11 of the Bankruptcy Code and has continued in the operation of its business under Bankruptcy Code §§ 1107 and 1108.

2. The Debtor operates and owns certain tangible and intangible assets of an online dating service in the United States (the “Business”).

3. The APA includes in these assets is “the originals and all copies of: the Customer list of the Business, all Customer files of the Business, the current and historical referral list of the Business, including, without limitation, those items specifically set out in Schedule 1.01(a), and all other documents, files and records of, or relating to, any of the Assets or the Business.” APA, §1.01(c).

4. As part of the Business, Debtor maintains an online dating website, True.com, that asks consumers to provide a broad range of information about themselves. On the website Debtor also makes a series of specific representations assuring consumers of its commitment to protecting their privacy. For example, at the page where consumers who wish to become members are asked to provide their email address, date of birth, password and screen name, Debtor explicitly represents: “We won’t share this email address with other TRUE members or unaffiliated third parties for marketing purposes.” In a small font, that sign up page includes links to the Debtor’s privacy policy, attached to this Objection as Exhibit A, and that policy includes numerous statements which assure consumers that their personal information will be protected.

5. Included among those assurances are the following:

TRUE treats all of your information with the utmost care for your privacy and security.

TRUE does not sell, trade, or otherwise disclose customer lists names, addresses, birth dates, email address or other individually identifiable information (collectively “Personal Information”) to unaffiliated third parties without your permission.

TRUE guards your Personal Information carefully. The Personal Information that you provide will be used by TRUE to provide you with information about products and services available to you through TRUE and select partners. TRUE will not disclose Personal Information to non-affiliated third parties without your consent.

TRUE will not disclose your Personal Information to non-affiliated third parties without your permission unless we need to do so in order to comply with applicable law, a subpoena, or other legal process or to protect the personal safety of our users or the public. TRUE does not sell or rent Personal Information about its users to non-affiliated third parties. If TRUE intends to share your Personal Information with a non-affiliated third party, we will do so only with your knowledge and consent.

Exh. A.

6. In contrast to those specific plain English assurances, Debtor's privacy policy includes two sentences which introduce a certain ambiguity: In the event that TRUE should be acquired or substantially all of its assets transferred, Personal Information would be considered a transferable asset. TRUE will give registered members notice prior to transferring their Personal Information, and an opportunity to opt-out of having their Personal Information transferred to the new entity. *See* Exh. A.

7. The privacy policy also includes information about some of the types of information Debtor collects from members:

During sign-up, TRUE.com collects the following Personal Information: name, address, birth date, and email address, along with other individual identifiable information about you and the type of people and relationships you are seeking through our website (e.g., hobbies, interests, personal preferences, personality traits).

Exh. A.

8. On December 14, 2012, the Court issued an Order appointing Chris Moser, Esq. as the Trustee. (Docket #107)

9. The Trustee filed a motion on August 19, 2013, seeking Court approval of, *inter alia*, certain bid procedures (the "Bid Procedures") and the APA in connection with the sale of Debtor's assets. (Docket #225)

10. On August 29, 2013, the Court approved the Bid Procedures, the APA, and the form of Notice, and scheduled the Sale Hearing for October 3, 2013. (Docket #225)

11. Under the APA, POF has agreed to pay \$700,000 as a total purchase price (APA §

1.05) for substantially all of the Debtor's assets (defined by APA § 1.01, the "Purchased Assets"), including, *inter alia*, the PII contained in "all Customer files of the Business, the current and historical referral list of the Business." (APA § 1.01(c))

12. The Motion to Sell, the APA, and notice of the Sale do not contain any provision that provides notification to Customers of this potential sale and transfer of Customers' files and PII..

13. On September 13, 2013, the Court appointed Lucy Thomson as the Consumer Privacy Ombudsman pursuant to Section 332 of the Bankruptcy Code.

14. The Consumer Protection Division of the Office of the Texas Attorney General ("CPD") first learned of this proposed sale the morning of October 3, 2013, and immediately contacted the Trustee.

15. On information and belief the Federal Trade Commission ("FTC") was also not notified of the Sale Motion,<sup>3</sup> nor was any other consumer protection agency.

16. On October 3, 2013, the Court held a hearing on the Sale Motion.

17. At the hearing the Trustee very graciously agreed to continue the matter to allow the Attorney General to formally review the Sale Motion and its provisions to ensure the protection and safeguard of consumer privacy that Congress mandated in 11 U.S.C. § 363(b)(1). The Attorney General would like to acknowledge the professionalism and courtesies of the Trustee and his counsel in agreeing to this continuance and allowing the Attorney General an opportunity to review this transaction. the sale hearing and agreed to parties' request for a continuance.

18. For the reasons set forth below, the Attorney General objects to the Motion to Sell only to the extent it does not sufficiently notify and allow Customers to affirmatively opt-in to have their PII transferred to POF. At a minimum, if the Court approves the Sale on the current terms, the Attorney General respectfully requests formal notice, as proposed herein, be provided to Customers prior to the actual transfer of their PII.

### **Argument**

19. The Attorney General has been at the forefront of protecting consumer privacy in bankruptcy sales for many years since the seminal case on this issue of *In re Toysmart, LLC*, Case No. 00-13995, (Bankr. D. Mass. 2000); *see also Living.com, Inc.*, Case No. 00-12522

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<sup>3</sup> The FTC is presently furloughed during the federal government shutdown, so the undersigned has been unable to confirm whether it had notice of the Sale Motion. The FTC does not appear on the Debtor's matrix or in any certificate of service.

(Bankr. W.D. Tex. 2000); *DrKoop.com, Inc.*, Case No. 01-47426 (Bankr. C.D. Cal. 2001); *Texas Attorney General: Privacy Is Not For Sale*, Hal F. Morris & Flora A. Fearon, ABI J.(Oct. 2000)(hereinafter, “ABI Article”).

20. The Sale falls under Section 363(b)(1) because the Debtor offers “a product or a service [that] discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor” and such privacy policy was in effect on the petition date.11 U.S.C. § 363 (b) (1).

21. Accordingly, “the trustee may not sell or lease personally identifiable information to any person unless--

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332 [11 U.S.C. § 332], and after notice and a hearing, the court approves such sale or such lease--

(I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

*Id.*

22. The Attorney General submits that the sale violates Debtor’s published privacy policy because (1) the policy’s inconsistencies should be construed against the Debtor, and (2) no actual notice was provided to Customers of a potential transfer of PII.

23. Even if the Debtor’s privacy policy were violated, the Court may approve the sale of PII if a Customer consents or if the Court finds no applicable non-bankruptcy law has been violated. Here, due the potential transfer of highly sensitive PII, the unique facts of this case require more consideration, and the Attorney General believes various consumer protection laws have been violated. Therefore, to ensure protection of consumer privacy, notice and the implementation of an opt-in procedure should be required.

A. *Debtor’s Published Privacy Policy Has Inherent Inconsistencies And Therefore Should Be Construed In Favor of the Customers*

24. Debtor’s online privacy policy on its website at True.com provides inconsistent information to its Customers. In the opening paragraph Debtor informs them that if substantially all of its assets are to be transferred (and their personal information would be an asset), then they will first be notified and then given an option to opt-out. *See supra* ¶ 4; Exh. A, p. 1¶ 1. Later in that same notice, however, the policy ambiguously informs its Customers it will not reveal personal information to non-affiliated third parties unless required to comply with a legal process. *See supra* ¶ 6; Exh. A, p. 2 ¶11. This same paragraph also states it will not share the

information with a non-affiliated third party without the Customers' knowledge and consent. *Id.*

25. The deceptive ambiguity of these contradictory statements mislead Customers who have no way to discern whether they must affirmatively consent or object to the transfer of their PII.<sup>4</sup>

26. Moreover, the misleading statements do not state whether or how Customers will receive notice of a potential transfer of their PII. Indeed, in this case, Customers have received no notice of the bankruptcy, the Sale, or of any resulting possibility of a transfer of their PII.

27. Although the database of Customers' information is an asset of this bankruptcy estate, it is still burdened by the privacy guarantees Debtor made to Customers to attract their business. Therefore, it should not be sold "free and clear of interests" similar to other assets pursuant to Section 363 without strict compliance with the contractual or statutory restrictions placed on the sale or transfer of the asset. *See* ABI Article, *supra* at ¶18. Debtor's online privacy policy places the authority with the Customers to alter, amend, edit, or delete personal information, so therefore, the Customers, and only the Customers, should be entitled to determine whether their PII may be disclosed or sold to third parties. *See id.*

28. If a contract is found to be ambiguous (i.e., open to two reasonable interpretations), then the agreement is construed more strictly against the party who drafted it. *See Richland Plantation Co. v. Justiss-Mears Oil Co.*, 671 F.2d 154, 156 (5th Cir. Tex. 1982); *In re Las Torres Dev., L.L.C.*, 408 B.R. 876, 884-85 (Bankr.S.D.Tex.2009) (resolving a contract ambiguity in favor of a consumer because the sophisticated financial entity and the drafter of the contract had a better bargaining position to know the uncertainties of meaning); *Nat'l Ropes, Inc. v. Nat'l Diving Svc., Inc.*, 513 F.2d 53 (5th Cir. 1975).

29. Construing the privacy policy against the Debtor would thus favor an opt-in procedure whereby Customers could receive sufficient notice to affirmatively consent to the transfer of their PII to POF. Without this affirmative consent, Debtor would not transfer the data and would instead delete and destroy it.

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<sup>4</sup> Notwithstanding inconsistencies within the privacy policy, the Attorney General also notes that the Debtor may have several violations of the Texas Deceptive Trade Practices Act ("DTPA"). TEX. BUS. & COM. CODE §17.45-47. The Attorney General is authorized by the state of Texas to act on behalf of consumers in Texas to enforce the DTPA to protect against false, misleading and deceptive business practices, unconscionable actions, and breaches of warranty. If the Attorney General pursued DTPA violations here on behalf of the State, penalties, allowable up to \$20,000 per incident and multiplied by each of the 30 million Customers, would inflict a significant financial burden to this estate. Even if the Attorney General only sought \$1 per incident, these penalties alone would exceed any benefit a sale would bring to the estate—a sale that ostensibly benefits only the IRS and secured creditor. In addition to these possible DTPA violations, having just learned of this bankruptcy case and the Sale, the Attorney General is also investigating potential violations of the Texas Internet Dating Safety Act. TEX. BUS. & COM. CODE § 106.001-.008. Violations of this Act carry "a civil penalty in an amount not to exceed \$250 for each Texas member registered with the online dating service provider during the time of the violation." *Id.* § 106.007 (a). Although the exact number of Texas Customers is not known, these penalties, too, would certainly financially impact the Debtor.

B. *The Customers' Information Is Highly Sensitive*

30. To add insult to injury, the PII at issue in this case involves highly sensitive information. In addition to the privacy policy's definition of personal information (customer lists names, addresses, birth dates, email address or other individually identifiable information),<sup>5</sup> Debtor's Business also collects more personal database information. The attached Exhibit B, compiled from communications with the Consumer Privacy Ombudsman and the Trustee, provides a non-exhaustive list of data fields contained within the Customers' files. *See* Exh. B. The Attorney General has not been successful in obtaining a list of the actual data fields being sold and transferred.

31. It is fair to assume that regular consumers would not imagine this intimate information they shared within a discrete forum—such as dating profiles, searches, sexual preferences, communications, and recordings—would be subject to disclosure and sale without their consent!

32. Consistent with the foregoing, the Attorney General is also concerned about the ambiguous APA definition of assets that states “the Customer list . . . all Customer files . . . [and] the current and historical referral list of the Business.” APA, §1.01(c).

33. Specifically, this language raises a question of whether this definition would include former Customers who may have closed their accounts. These Customers may have the reasonable expectation that their relationship with the Debtor has ceased and would no longer receive contact from the Debtor. Moreover, it is unclear whether the APA would include as Customers those who have already affirmatively requested not to be contacted by the Debtor. This content to be sold may include information deleted or corrected by members who have long ceased to use Debtor's services and whose personal circumstances have changed such that they would no longer wish to participate in any dating service.

34. Given the highly sensitive information that exists within Debtor's Customers' files, the conditions of the Sale require more consideration for consumer privacy.

35. Admittedly, Customers at one time joined an internet dating forum where such information is expressly shared. This agreement to share with a defined community of users, however, does not suggest that Customers were impliedly allowing the disclosure of intimate information to a newer and larger forum without first giving permission. Disclosure also cannot be implied when viewed in the light of the privacy policy's express assurance that the information would not be disclosed without consent.

36. Moreover, any Customer potentially injured by the disclosure of their PII in this case would not have the ability to later obtain injunctive protection because POF is a Canadian

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<sup>5</sup> .This information squarely falls within the definition of PII of the Bankruptcy Code.  
*See* 11 U.S.C. 101(41A)

entity over which either this or another United States court would have limited, if any, jurisdiction.

C. *An Opt-In Policy And Proper Notice Would Better Align With Consumer Protection Laws and Fair Information Practice Principles*

37. The sale may proceed only if no applicable non-bankruptcy law has been violated. Although the Attorney General recognizes the Sale benefits the estate, such benefit cannot compromise consumer privacy. For this reason, the Attorney General respectfully urges the Court require the notice and implementation of an opt-in policy. While 11 U.S.C. § 363 defines the permissible use, sale or lease of estate property, it does not authorize a debtor to sell property in violation of state law transfer restrictions. It merely provides the Debtor with the authority to dispose of property if the Debtor would have the same right under state law. *See Integrated Solutions Inc. v. Svc. Support Specialists Inc.*, 124 F.3d 487, 493 (3d Cir. 1997).

38. The FTC has reviewed the manner in which entities collect and use personal information and accompanying safeguards to ensure those practices provide fair and adequate privacy protection. Moreover, the FTC has identified widely-accepted principles concerning fair information practices. *See* FTC, Fair Information Practice Principles, *available at* <http://www.ftc.gov/reports.privacy3/fairinfo.shtm>;<sup>6</sup> *see also* Consumer Privacy Ombudsman Report, *In re Circuit City Store, Inc.*, Case. No. 08-35653 (Bankr. E.D. VA Aug. 26, 2009).

39. Of the FTC-identified principles, those relevant to this case are (1) Notice; (2) Choice/Consent; (3) Integrity/Security; and (4) Enforcement/Redress. *Id.*

Notice

40. Under the principle of Notice, the FTC has stated,

The most fundamental principle is notice. Consumers should be given notice of an entity's information practices before any personal information is collected from them. Without notice, a consumer cannot make an informed decision as to whether and to what extent to disclose personal information. Moreover, three of the other principles discussed below—choice/consent, access/participation, and enforcement/redress—are only meaningful when a consumer has notice of an entity's policies, and his or her rights with respect thereto.

*Id.*

41. The Attorney General proposes that the Trustee, as seller of the Debtor's Assets, provide electronic notice to all affected Customers on two occasions. The state attorneys general

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<sup>6</sup> Due to the federal government shutdown, the website was not available for viewing at the time of filing.



in Toysmart.com proposed email notification to all potentially affected customers to effectuate consent by such customers, i.e., on an opt-in basis. Email notice, in a form approved by the bankruptcy court, would not only provide each of the Customers with information regarding a change in circumstance or a change in the original contract it entered with the Debtor, but would also comport with due process requirements that notice be given to any party having an interest in property being sold under Section 363.

42. This Notice must be given by the Trustee rather than POF. APA Section 5.02<sup>7</sup> provides a four-week timeframe in which POF would operate the Business and notify Customers of the Sale and transfer. The Attorney General strongly opposes any provision in which the PII is already transferred before notice is given. Otherwise this is tantamount to asking forgiveness rather than permission for a transgression; the Customers' privacy has already been violated and they are left with limited means of recourse or injunctive relief.

43. The Attorney General requests that first, shortly after the Sale is approved, Customers should be notified the Sale has taken place, how it affects them, and that on a date certain (no less than four weeks) their PII will be transferred through a procedure, to be explained further herein.

44. A second reminder notice should be sent to Customers a week prior to the deadline.

45. Further, the Attorney General proposes language, *infra*, to be included in the notification to Customers for the preferred opt-in procedure, and language for the opt-out procedure, if the Court determines that to be the better option.

46. Finally, the Attorney General requests that the Trustee file affirmations certifying that the two notices were sent, in addition to an affirmation filed after the deadline to notify the Court and the Attorney General how many Customers chose to opt-in or opt-out.

#### Choice/Consent

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<sup>7</sup> APA § 5.02 provides Seller a 4-week timeframe after the Sale closes for other notifications:

Seller represents that the Seller will operate the Business as a going concern, providing all services to Customers of Seller until 4 weeks after the Closing Date or the sending of the Notices of Cancellation ~ whichever is first, it being agreed that the Notices of Cancellation of subscription Agreements shall be made by Purchaser as near to Closing Date as feasible and opportunity to enroll subscribers with services provided by Purchaser or its assignees and shall be exclusively made by and for the sole benefit of Purchaser. Seller will keep the True Beginnings site functioning in the ordinary course until Notices of Cancellation have been sent and will make one employee available to directly assist Purchaser in connection with migrating Seller's code and databases to Purchaser's servers.

47. The FTC recognizes the principle of Choice/Consent with respect to personal information:

At its simplest, choice means giving consumers options as to how any personal information collected from them may be used. Choice relates to secondary uses of information—i.e., uses beyond those necessary to complete the contemplated transaction. Such secondary uses can be internal, such as placing the consumer on the collecting company's mailing list in order to market additional products or promotions, or external, such as the transfer of information to third parties.

Traditionally, two types of choice/consent regimes have been considered: opt-in or opt-out.

Opt-in regimes require affirmative steps by the consumer to allow the collection and/or use of information.

Opt-out regimes require affirmative steps to prevent the collection and/or use of such information.

In order to be effective, any choice regime should provide a simple and easily-accessible way for consumers to exercise their choice.

FTC, *Fair Information Practice Principles*.

48. As stated, the Attorney General believes that an opt-in notice to Customers more appropriately and practically addresses the issues here. Email consent by Customers on an opt-in basis allows them to assent to the sale of their PII and expressly choose to enter a new contract with POF. *See* ABI Article, *supra* at ¶18. Notice and consent requirements are not novel ideas with respect to estate assets. *See e.g., Perlman v. Catapult Ent't, Inc. (In re Catapult Ent't Inc.)*, 165 F.3d 747 (9th Cir. 1998)(precluding the debtor's assumption of patent licenses pursuant to § 365 over the licensor's objection due to non-bankruptcy law barring assignment of the personal and non-delegable licenses to a hypothetical third party without the licensor's consent.).

49. Generally, “opt-in” disclosure policies provide a more restrictive option with a lower risk of disclosure of personal information than their “opt-out” counterparts in the context of freedom of speech challenges to FCC regulations and orders. *See, e.g., Nat'l Cable & Telecomms. Ass'n v. FCC*, 555 F.3d 996, 999 (D.C. Cir. 2009)(directing telecommunications companies to obtain individual customer's ‘opt-in’ consent before sharing that individual's information with certain third party marketers, thereby replacing an ‘opt-out’ requirement for disclosure). In upholding the constitutionality of an opt-in order, the D.C. Circuit affirmed the FCC's finding that the newer opt-in requirement would reduce the risk of disclosure by third-party affiliates of telecommunications companies—affiliates whose actions were not governed by the statute underlying the FCC order. *Id.* at 1002-03.

50. Likewise, an opt-in requirement here would reduce the risk of disclosure of the Customers' highly-sensitive PII by POF, an entity whose actions could be subject to limited jurisdiction of United States courts, and an entity with a different privacy policy—a policy which these Customers did not review and expressly agree to prior to submitting their PII.

51. Other cases have also implicitly acknowledged that opt-in disclosure policies provide a stronger protection for consumer privacy rights than opt-out regimes do. *See, e.g., U.S. West, Inc. v. FCC*, 182 F.3d 1224 (10th Cir. 1999) (overturning a former FCC order creating an opt-in disclosure requirement because the less-restrictive opt-out requirement would be more appropriate under the circumstances).

52. Accordingly, the Attorney General requests the following opt-in language be included in the Notice sent to all Customers:

By Order of the United States Bankruptcy Court in the Eastern District of Texas, all of the assets of True.com, including all of the personal information that you as a member have provided to True.com, will be transferred to a Canadian online dating company, Plentyoffish.com, conditioned on your express consent by clicking the key below to affirmatively opt-into this transfer. If you do not opt-in by [insert date], then all of your personal information and your complete file will be destroyed by True.com. The decision to opt-in is an important one that should be carefully considered.

Background: On August 1, 2012, the online dating service, True.com, of which you are a member, filed Chapter 11 bankruptcy in the United States Bankruptcy Court for the Eastern District of Texas, (True Beginnings, LLC, case number 12-42061).

53. If the proposed changes herein pose a concern to POF based on a perceived change in value of the Assets, then they may decide to renegotiate the Sale price. When viewed under a price model of cost-per-file-transferred, the price per file here is less than two cents! (.016) Under the APA, POF is paying \$700,000 for 43 million Customers' files. Although the Attorney General has yet to determine exactly which information fields are being sold and transferred, based on the list in Exhibit B, most of these files contain PII. One can reasonably question whether the value of highly sensitive PII exceeds two cents per file, especially from the Customers' perspective.

54. On information and belief, POF prefers an opt-out form of notice. A rough proposal of the opt-out form of notice by POF would read as follows:

Hello #user's first name#,

TRUE is about to undergo some exciting changes. The assets of TRUE are to be sold

to PlentyOfFish (POF.com), the world's largest online dating site with over 60 million registered users. Founded in 2003, PlentyOfFish has been using the most advanced matching system in the industry to help singles all over the world meet, date, and find meaningful relationships. PlentyOfFish offers Android, iPhone, and iPad apps, and was recently named one of the best "After Work Apps" by Mashable. For more information, visit: [www.pof.com](http://www.pof.com).

What does this mean to you? In the short term, TRUE will continue to help you find exactly what, and who, you're looking for. Your personal information will soon be protected by PlentyOfFish and in order to do this, it will be moved from the US to Canada. In the longer term, POF is looking forward to introducing exciting new features to TRUE.

If you do not wish to have your personal information protected by POF, you must opt out of the transfer. Doing so will delete your account with TRUE, and none of your personal information will be transferred. To opt out of this transfer, please click the following link: [www.#opt-out link#.com](http://www.#opt-out link#.com)

55. The Attorney General does not believe this thinly veiled advertising for POF provides sufficient protection for the Customers' PII. POF will likely argue that it prefers opt-out notice because of the low numbers of opened emails associated with a mass-mailing. When the result of this notice affects the privacy of tens of millions of consumers, though, the default option for an unopened email should not be the transfer of highly sensitive PII without a Customer's express consent. Failure to receive notice can never be deemed express consent.

56. If the Court determine that opt-out notice is more appropriate, the Attorney General respectfully requests the following language be included in the notice to Customers:

By Order of the United States Bankruptcy Court in the Eastern District of Texas, dated [insert date] all of the information you have provided to True.com will be transferred on [insert date] to a Canadian online dating company, Plentyoffish.com unless you elect to opt-out of this transfer by clicking on the link below.

Background: On August 1, 2012, the online dating service, True.com, of which you are a member, filed Chapter 11 bankruptcy in the United States Bankruptcy Court for the Eastern District of Texas, (True Beginnings, LLC, case number 12-42061) Under the terms of a proposed sale of all of the debtor's assets, all of the personal information you have provided True.com is being transferred absent your decision to opt out of the transaction.

If you elect to opt-out, all of your information will be permanently destroyed. If you

do nothing, all of your personal information and your entire True.Com file will be transferred to Plentyoffish.com. The decision whether to opt-out is wholly your decision, and you should carefully consider whether you wish to have your information transferred.

### Integrity/Security

57. The FTC principles regarding personal information also include the following statement supporting data integrity and security:

To assure data integrity, collectors must take reasonable steps, such as using only reputable sources of data and cross-referencing data against multiple sources, providing consumer access to data, and destroying untimely data or converting it to anonymous form. Security involves both managerial and technical measures to protect against loss and the unauthorized access, destruction, use, or disclosure of the data.

#### *FTC, Fair Information Practice Principles*

58. Debtor's published privacy policy does not include a stated retention policy. On information and belief, Debtor does not have a policy that destroys Customers' information if they terminate their membership. Debtor has been in business for over a decade, and arguably has many files of terminated Customers. Under this circumstance the Attorney General further argues in favor of an opt-in procedure prior to the transfer. These concerns stem from ambiguity in the APA over whether this is the type of "historical" data Debtor intends to transfer. Many of the former Customers may not have the same email address to receive notice.

### Enforcement/Redress

59. Finally, the FTC identifies the principle of Enforcement/Redress when dealing with personal information:

The core principles of privacy protection can only be effective if there is a mechanism in place to enforce them.

#### *FTC, Fair Information Practice Principles*

60. The bankruptcy laws should not be used to compromise a consumer's reasonable right to privacy and that is particularly so in the instant case which involves highly sensitive personal information. In this case, the obligation to provide notice and options to the Customers should be borne by the Seller, who has control over the information prior to the sale. Upon completion of the sale, Customers have limited, if any control, over their information. Moreover, the Sale involves POF, a Canadian business, this Court could not provide injunctive relief to

Customers who felt compromised.

61. As stated, the Attorney General does not object to a sale that is consistent with Debtor's stated privacy policies as required by 11 U.S.C. § 363(b)(1). To this end, a Sale that includes notice and implementation of an opt-in procedure would also ensure Customers' privacy and Debtor's compliance with consumer protection laws.

62. If the Court determines that an opt-out procedure is adequate, then the Attorney General respectfully requests Customers receive notice in the form requested herein.

WHEREFORE, the Attorney General respectfully requests that the Court sustain the objection contained herein, and grant such other and further relief as it may deem just and proper. As the CPD of the Attorney General's Office has been in this case less than one week, discovery is ongoing, and the Attorney General respectfully reserves the right to amend or file supplemental pleadings.

Respectfully submitted,

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ATTORNEYS FOR THE STATE OF TEXAS

Certificate of Service

I certify that a true and correct copy of the foregoing Objection has been served via the Court's Electronic Filing System on all parties requesting notice in this proceeding and that copies were mailed to the counsel and parties listed below, via first class U.S. Mail, postage prepaid on October 9, 2013.

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